

**United States Department of Labor
Employees' Compensation Appeals Board**

T.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Levittown, NY, Employer**

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**Docket No. 17-0845
Issued: December 27, 2017**

Appearances:

Paul Kalker, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On March 6, 2017 appellant, through counsel, filed a timely appeal from a February 8, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 17-0845.

The Board finds that the case is not in posture for decision. Appellant filed an occupational disease claim (Form CA-2) on December 29, 2015, identifying repetitive motion in his job as a letter carrier. The medical evidence submitted diagnosed carpal tunnel syndrome and noted that appellant had prior carpal tunnel surgeries. In a March 22, 2016 decision, OWCP indicated that appellant had a prior claim for carpal tunnel syndrome. According to OWCP, the claim at that time had been denied. OWCP also referred in the decision to evidence from the employing establishment controverting the current claim as appellant had preexisting carpal tunnel syndrome. The current case record provides a February 4, 2016 statement from the

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

employing establishment describing appellant's job duties, but does not discuss carpal tunnel syndrome. It is unclear whether relevant evidence was placed in the prior claim file.

In the February 8, 2017 decision, OWCP does not acknowledge that appellant had a prior claim for carpal tunnel syndrome, nor does OWCP acknowledge any further development of the prior claim or any relevant evidence from that claim.

The two claims have not been administratively combined. The Board finds that a proper adjudication of the current claim must include the prior claim. OWCP procedures provide that cases should be combined when necessary for correct adjudication of the issues.² It should combine the case records and provide a proper history of the case and discuss any accepted conditions. By combining the case records and reviewing all of the evidence, OWCP may properly review the issues presented with respect to the claim filed on December 29, 2015. It should then issue an appropriate merit decision.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 8, 2017 is set aside and the case is remanded to OWCP for further action consistent with this order of the Board.³

Issued: December 27, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000).

³ Colleen Duffy Kiko, Judge, participated in the preparation of this order, but was no longer a member of the Board effective December 11, 2017